

U. S. Circuit Court. Southern District of  
New York.

The John Church Company )  
against ) In Equity  
American Graphophone Co. ) No. 7163

BILL OF COMPLAINT, 1899

Raymond R. Wile  
1976.

U. S. Circuit Court. Southern District of New York

The John Church Company                   ) In Equity.  
  }  
versus                                        ) No. 7163  
  }  
The American Graphophone Company        )

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Fol. 1. CIRCUIT COURT OF THE UNITED STATES,  
Southern District of New York.

THE JOHN CHURCH COMPANY,  
*Complainant*  
Plaintiff,

-against-

AMERICAN GRAPHOPHONE COMPANY,  
Defendant.

BILL in EQUITY.

7163

2. To the Honorable The Judges of the Circuit Court of the  
United States in and for the Southern District of  
New York.

The John Church Company, a corporation created under  
and by virtue of the Laws of the State of Ohio, and duly  
authorized to do business in the State of New York, brings  
this, its Bill of Complaint against the American Graphophone  
Company, a corporation duly organized and existing under the  
Laws of the State of ~~West Virginia~~, and doing business in the  
State of New York, alleges as follows:

3. FIRST:- That your orator, the John Church Company  
is a corporation duly organized under the Laws of the State  
of Ohio, and engaged in the business of publishing music,  
and has a place of business in the City and County of New  
York, where it is fully authorized by the Laws of the State  
of New York to transact business, and has an office for the  
transaction of such business at No. 141 Fifth Avenue, Bor-  
ough of Manhattan, City of New York, N. Y.

That the defendant, the American Graphophone Com-  
pany, is a corporation duly organized under the Laws of  
the State of ~~West Virginia~~ and engaged in the transaction of

4. business in the City of New York, at No. 11 Broadway in the Borough of Manhattan.

SECOND:- That the Defendant, the American Graphophone Company, manufactures and sells extensively, apparatus and instruments known as graphophones and phonographs and cylinders to be used for making sound records, according to certain "engraving methods" socalled, and also apparatus or instruments for reproducing the sound from the said records. That it also manufactures and sells extensively, sound records, having songs and musical compositions engraved or written thereon. That the sound records manufactured and sold by the defendant, the American Graphophone Company consist of cylinders of a wax-like or amorphous material, on which are cut or gouged out grooves or lines of varying depth and form, the variations in depth and form corresponding in form to sound waves. That thesaid sound records are made by the cutting or gouging of a recording stylus attached to a disc, both of which are moved by the sound waves striking against the disc. The resulting cut, gouged or graved lines are the sound record. The reproduction of the sound record into sound is made by the following of the sound lines in the record cylinder by a reproducing stylus, so that the reproducing stylus vibrates in accordance with the sound lines and its motion in connection with certain mechanical devies reproduces the sound waves that originally created the sound lines, and thus the original sounds that were recorded are reproduced.

The instruments and apparatus made and sold by the Defendant, the American Graphophone Company, accentuate and perfect the reproduction of these recorded sounds.

7. The instruments and records made and sold by the Defendant, the American Graphophone Company contain and re-

cord songs and musical compositions and purchasers are enabled by the aid of these records and instruments to reproduce such songs and musical compositions at will and as often as desired; The result obtained by the use of said records or apparatus or instruments is the hearing of copies or reproductions of the original song or musical composition graved on the sound record.

8. The Defendant makes original and duplicate sound records for its commercial transactions for use on its own instruments and apparatus, with the methods at its command, it produces original records of all kinds of songs, musical compositions, &c., by employing the services of able singers, players upon musical instruments, &c. From these original records it makes duplicate records by a mechanical process, and sells commercially great numbers of these duplicate records. The Defendant uses for its own purpose, any song or musical composition it chooses without any regard for the rights of the proprietors of the copyrights on the same, claiming that its use of said songs or musical compositions is not an infringement of any copyright that may be held on them.

9. THIRD:- That your orator, John Church Company, is and was, at all the times mentioned herein, the owner and proprietor of a certain musical composition entitled "El Capitan March", composed by one John Philip Sousa. That said March is part of an opera or musical composition called "El Capitan", of which the music was composed by the said John Philip Sousa, and of which at all the times herein mentioned, your orator was theproprietor.

That on the 4th day of February 1896, and before the day of publication in this or any foreign country, your orator, the John Church Company delivered anddeposited at the

office of the Librarian of Congress in the District of Columbia, a printed copy of the title of the said musical composition in the following words, to-wit: "El Capitan Comic  
11. Opera,- in three acts. Book by Charles Klein, Music by John Philip Sousa. Vocal Score".

That on the same 4th day of February 1896 your orator the John Church Company, did deliver at the office of the Librarian of Congress at Washington, District of Columbia, two complete printed copies of said musical composition or opera of the best edition issued, printed from type set within the limits of the United States, or from plates made therefrom. That thereupon the Librarian of Congress recorded the name, title, and description of said musical  
12. composition or opera in conformity with the Laws of the United States respecting copyrights.

FOURTH:- That thereupon, and on said 4th day of February 1896, and thereafter, your orator the John Church Company gave notice of its copyright and claim thereto by inserting in each and every copy of every edition published of said musical composition or opera, on the title page thereof, or on the page immediately following, the words,- "Copyrighted 1896, by the John Church Company".

FIFTH:- That thereafter and on the dates hereinafter set forth, your orator the John Church Company, performed all the acts required to be done by the Laws of the United States, respecting copyrights, in order to entitle your orator to a copyright thereto and to maintain an action for the infringement thereof, in regard to a musical composition entitled "El Capitan March", which was one of the individual pieces of music in the aforesaid opera or musical composition El Capitan. AND your orator the John Church Company performed, as to the said El Capitan March,

the acts alleged in paragraph Fourth above, as being done  
in regard to the "El Capitan Opera" on the following days,  
14. and before the day of publication thereof in this or any  
foreign country, and with the following titles and for the  
arrangements specified in said title and performed all the  
acts required to be done by the Laws of the United States  
respecting copyrights, in order to obtain a perfect copy-  
right on each respective arrangement of the El Capitan March,  
and on the days indicated below, after each title.

|                                  |                     |
|----------------------------------|---------------------|
| "El Capitan March" for Piano,    | May 18, 1896.       |
| " Band,                          | May 21, 1896.       |
| " Orchestra,                     | June 20, 1896.      |
| " Four Hands,                    | July 30, 1896.      |
| 15.    " Six Hands,              | July 30, 1896.      |
| " Mandolin, piano<br>and Guitar, | August 20, 1896.    |
| " Mandolin solo,                 | August 20, 1896.    |
| " Banjo solo,                    | August 20, 1896.    |
| " Banjo Duet,                    | August 20, 1896.    |
| " Two Mandolins<br>and piano,    | August 20, 1896.    |
| " Banjo and Piano                | August 20, 1896.    |
| " Mandolin and<br>Piano,         | September 10, 1896. |
| " Guitar solo,                   | September 10, 1896. |
| " Two Mandolins<br>and Guitar    | September 10, 1896. |
| 16.    " Guitar Duet,            | September 10, 1896. |
| " Zither Duet,                   | September 10, 1896. |
| " Zither solo,                   | September 10, 1896. |
| " Mandolin and<br>Guitar,        | September 10, 1896. |

SI XTH:- That your orator the John Church Company  
before and since the publication of said opera or musical  
composition El Capitan and before and since the publication  
of the specific music in said opera called "El Capitan  
March", and the song, words and music thereof, and for all  
the different arrangements above set forth, has fully com-  
plied with and duly fulfilled all the requirements and pro-  
visions of the law and rules in and for such cases made  
17. and provided, and became and is entitled to and acquired the  
sole right to print, reprint, publish, complete, copy, exe-  
cute, finish and vend the musical composition aforesaid, the

"El Capitan March" for the period of twenty-eight years from the 4th day of February 1896, the time of recording the title of the "El Capitan Opera" or musical composition. AND your orator still holds and has held at all times mentioned herein, the right to such copyrights as proprietor.

SEVENTH:- That said musical composition the "El Capitan March" has had a large sale. Many copies of the same have been and are still used and your orator as proprietor of the copyright thereon has made profit therefrom, and having spent time, money and labor on the exploiting of said musical composition, your orator anticipates as a proper reward for its industry and expenditures, further gains and profits therefrom, and claims from the Court protection in its right to all the benefits of the Copyright Law of the United States.

EIGHTH:- That within the past few years the phonograph and the graphophone &c., have been invented, and they are finding a large and widening commercial use. One of their commercial uses is that of supplying a market which they have created, with audible copies or reproductions of songs, and musical compositions. That a large market has been created for music supplied by the phonograph and graphophones of the Defendant, supplanting the music made by other instruments. All the allegations in paragraph SECOND above are repeated and are alleged specifically in respect to the El Capitan March, and your orator alleges that the Defendant has made many records and copies, original and duplicate on its record cylinders of the El Capitan March, and has sold and is now selling such records and copies in large numbers, both with and without graphophone or phonograph instruments, without the consent and against the will of your orator, the proprietor of the copyright.

NINTH:- Further and specifically, your orator alleges that the defendant, the American Graphophone Company well knowing that your orator the John Church Company was the owner and proprietor of the aforesaid El Capitan March,  
21. and wrongfully disregarding the rights of your orator, and without its consent, has printed, reprinted, published, completed, copied, executed, finished, and vended the said "El Capitan March", to a very large extent, both separately in shape of cylinders on which have been cut or gouged in lines corresponding to wave lengths, the said musical composition and in shape of said cylinders in connection with instruments of its own make, called graphophones and phonographs, all of which was done in violation of your orator's rights under the Laws of the United States. FURTHER, that the defendant has, contrary to the provisions of Sec. 4965 of the amended Copyright Laws of the United States, and without the consent of your orator, engraved, etched, worked, copied, printed, published, translated, imported either in whole or in part said musical composition the El Capitan March with intent to evade the Law and knowing the same to be so done, exposed for sale copies of such musical composition.

WHEREFORE your orator the John Church Company prays:

23. I. That the Defendant, the American Graphophone Company may make full discovery and answer all the matters and facts above set forth.

II. That the said Defendant make full discovery and account of the cylinder records of the "El Capitan March" that it has sold or exposed for sale, and that it has now in its possession or under its control whether with or without graphophones or phonographs.

24. III. That the defendant and its clerks, attorneys, agents, workmen, servants, employes and any other person be enjoined both permanently and provisionally pendente lite, from printing, reprinting, publishing, completing, copying, etching, executing, furnishing, engraving, working, selling and exposing for sale the musical composition, the El Capitan March and copies thereof, and all sound records of the same, traced on cylinders or otherwise, both separate and with graphophones, phonographs or similar instruments.
25. IV. That the Defendant be compelled to pay to your orator, all the gaines that have accrued or been received by the Defendant or to which it is entitled by reason of the unlawful infringement of the copyright of your orator, in the aforesaid musical composition, "El Capitan March", arising from the sale of the sound records containing same, and all such gains as your orator would have received but for said unlawful acts of the Defendant.
- That your orator may have the application and enforcement in its favor, all the remedies provided in Sections 26. 4964, 4965 and 4966 of the Copyright Law of the United States, and your orator incorporates in this prayer, a demand for the relief therein provided, according as the facts in this suit may appear, and substantiate said prayer for relief.
- AND may it please your Honors to grant unto your orator, a Writ of Subpoena of the United States of America issued out of and under the seal of this Honorable Court, directed to the "American Graphophone Company and its officers, to-wit: Its President, Secretary and Treasurer, commanding them to appear on a day certain therein to be named, and under a certain penalty to be and appear in this Honorable Court, then and there to answer to all and singular

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the premises and to stand to and perform and abide such further order as may be decreed.

EDWARDS & BRYAN,  
Attorneys for Plaintiff,  
31 Nassau Street,  
New York City, N.Y.

City and County of New York: ss:-

28. *Ann F. Adams* being duly sworn, deposes and says that he is the ~~General Manager and Secretary~~ of The John Church Company, the Plaintiff herein. That he has read the foregoing Complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes the same to be true.

Sworn to before me this  
*11<sup>th</sup>* day of February, 1899. : *Ann F. Adams*.

*Hannanuxianus*

NOTARY PUBLIC,  
KING COUNTY  
STATE OF WASHINGTON